IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2373 OF 2004

V. R. Sharma ... Petitioner

versus

Navin Ramji Thakkar & anr. ... Respondents

...

Mr. Y.K. Sharma, for the Petitioner.

Mr. Manish R. Gitay i/by M/s. Ashwinkumar & Co., for Respondent No.1.

Mr. D.R. More, A.P.P., for Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

17th December 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Gitay waives notice for Respondent No. 1. Mr. More, A.P.P., waives notice for Respondent No. 2. As short question is involved, petition taken up for final disposal forthwith by consent.

. Respondent No. 1 has instituted criminal

action against 9 accused in the Court of Metropolitan Magistrate, 11th Court, Kurla, Mumbai, being Case No. 212/S/97 for offences under sections 138 and 141 of the Negotiable Instruments Act. In the complaint as filed, description of accused No. 7 was shown as Mr. Sharma Rameshwardayal Vishwanath. In the complaint, common assertion is made that statutory notice was served through Advocate to the accused. Later on, it transpired that person by name Mr. Sharma Rameshwardayal Vishwanath, who was named as accused No. 7, has expired long back in 1966. Incidentally, he is the father of the present Petitioner. The Petitioner entered into the said proceedings on the assumption that he has been named as accused No. 7.

. Assuming that the action could continue against the Petitioner, in the complaint as filed, except the assertion that accused Nos. 1 to 8 are Directors of accused No. 9 Company, there is no assertion or allegation that the Petitioner who was one of the Directors was in charge of the affairs of the Company or looking after day to day work of the Company and that the offence was committed with his consent or

connivance or is attributable to any neglect on his part being Director of the Company. Even upon reading of the complaint as a whole, at best, what has been alleged as can be discerned from para 4 of the complaint, is that accused Nos. 1 to 8, the Directors of accused No. 9 Company, have participated in the said trasnaction and are also liable to be dealt with for the said offence. This is not enough at all. It is well-settled that to name a person as accused who incidentally is the Director of a company, so as to make him responsible for the offence committed by the company, something more has to be alleged and established. In the present case, there is no assertion at all that the Petitioner was in charge of the day to day affairs of the accused company or that the offence in question was committed with his consent or connivance or attributable to any neglect on his part as Director of the accused company. Merely being a Director of the company does not make the person liable to be prosecuted for offence committed by the Company. There is nothing in the Companies Act or the Negotiable Instruments Act to assume that every Director is in charge of the day to day affairs of the

Company or has had consented or connived or the offence is committed because of any neglect on his part as Director. That is a fact which is, in the first place, to be alleged and established. If this allegation is missing in the complaint, the criminal action cannot proceed in law. It is nobody's case that the Petitioner is signatory to the cheques in question. Be that as it may, the case of the Petitioner is that subsequently he had resigned on 28th February 1997 as is established from Form 32 at page 26, which document is not disputed. As mentioned earlier, as there is no allegation in the complaint to establish the complicity of the Petitioner in the commission of the alleged offence as required by section 141 of the Act, the criminal action against the Petitioner cannot proceed. Hence, this petition ought to succeed.

. Accordingly, Rule is made absolute. It is directed that the proceedings pending in the lower Court are quashed sofar as the Petitioner, accused No. 7, is concerned. Ordered accordingly.

. Parties to act on the authenticated copy

of this order.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2374 OF 2004

Madhusudan J. Maru ... Petitioner

versus

Navin Ramji Thakkar & anr. ... Respondents

...

Mr. Y.K. Sharma, for the Petitioner.

Mr. Manish R. Gitay i/by M/s. Ashwinkumar & Co., for Respondent No.1.

Mr. D.R. More, A.P.P., for Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

17th December 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Gitay waives notice for Respondent No. 1. Mr.

More, A.P.P., waives notice for Respondent No. 2. As short question is involved, petition taken up for final disposal forthwith by consent.

. For the reasons recorded in the companion writ petition, being Criminal Writ Petition No. 2373 of 2004, this petition ought to succeed. Inasmuch as even in respect of the Petitioner herein, who is original accused No. 6, there is no specific allegation about the fact that he was in charge of the company or looking after the day to day management of the company, assuming that he was a director of the accused company as alleged. Besides, this Petitioner is not the Signatory to the cheque in question. For the reasons recorded in the order in companion matter, this petition also succeeds. Rule made absolute accordingly.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2375 OF 2004

Jugal Kishor Maru ... Petitioner

versus

Navin Ramji Thakkar & anr. ... Respondents

...

Mr. Y.K. Sharma, for the Petitioner.

Mr. Manish R. Gitay i/by M/s. Ashwinkumar & Co., for Respondent No.1.

Mr. D.R. More, A.P.P., for Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

17th December 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Gitay waives notice for Respondent No. 1. Mr. More, A.P.P., waives notice for Respondent No. 2. As short question is involved, petition taken up for final disposal forthwith by consent.

. For the reasons recorded in the companion

writ petition, being Criminal Writ Petition No. 2373 of 2004, this petition ought to succeed. Inasmuch as even in respect of the Petitioner herein, who is original accused No. 5, there is no specific allegation about the fact that he was in charge of the company or looking after the day to day management of the company, assuming that he was a director of the accused company as alleged. Besides, this Petitioner is not the Signatory to the cheque in question. For the reasons recorded in the order in companion matter, this petition also succeeds. Rule made absolute accordingly.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)